

15 September 2008

Mr. Dennis Facer  
JR Simplot Company  
P.O. Box 1270  
Afton, WY 83110

RE: Draft 401 Certification for ACOE Permit NWW No. 043300059, South Fork Sage Creek crossing, Smoky Canyon Mine, Caribou County, Idaho.

Dear Mr. Facer:

The Idaho Department of Environmental Quality (DEQ) has considered water quality certification for your U.S. Army Corps of Engineers (ACOE) permit NWW No. 043300059 to discharge fill material below the ordinary high water mark of the South Fork of Sage Creek to install a culvert to provide access from the south end of Smoky Canyon Mine Panel E to the proposed Panel F in the Manning Creek Phosphate lease.

Idaho's Water Quality Standards and Wastewater Treatment Requirements (WQS, IDAPA §58.01.02) have three basic components: beneficial use classifications for waters of the state, criteria to protect existing and designated beneficial uses, and an anti-degradation policy. These waters are protected for the following uses: cold water aquatic life, salmonid spawning, primary and secondary contact recreation, industrial and agricultural water supply, and aesthetics (IDAPA §58.01.02.100.03.b.c, 04, 05 and 160.03.). The South Fork of Sage Creek (from S. F. Sage Springs downstream) is proposed for listing as impaired by selenium in the State of Idaho's 2008 Integrated 303(d)/305(b) Report, currently awaiting approval by EPA Region 10. The reach of South Fork Sage Creek proposed for this work is an intermittent reach, typically dry in late summer and early fall.

Idaho's anti-degradation policy requires the maintenance of existing uses and the level of water quality necessary to protect those uses.

In addition to the items identified in the ACOE permit and the Smoky Canyon Mine, S. F. Sage Creek Crossing Plan (Sept 9, 2008 submittal to IDEQ) the following conditions are required to ensure compliance with Idaho Water Quality Standards:

1. Best Management Practices (BMPs) for construction and erosion control shall be implemented, as detailed in the submitted construction plans, to prevent and control the discharge of sediment to all waters of the State during and following construction. BMPs shall be inspected on a routine basis (i.e. daily during active construction and weekly otherwise) to ensure their integrity and maintained/repared within 24 hours if found compromised.
2. Construction affecting the bed or banks shall take place during periods of no or low flow.

3. Petroleum products, hazardous, toxic and/or deleterious materials shall not be stored, disposed of or accumulated adjacent to or in the immediate vicinity of state waters unless adequate measures and controls are provided to ensure that those materials will not enter state waters as the result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third party activities. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this equipment is available. Alternatively daily inspections of all fluid systems on equipment to be used in or near any water body shall be done to assure no leaks or potential leaks exist prior to equipment use. A log book of these inspections shall be kept and provided to DEQ upon request. In addition, emergency spill procedures should be in place which may include a spill response kit (i.e. –oil absorbent booms and other equipment).
4. This certification shall remain in effect for a period of two (2) years from the date of issuance, although attention should be paid to use appropriate flow related work windows (see item 2). If project activities are not begun within this 2 year period, the certification shall be void, and a new certification shall be required. If significant changes occur in the project plan, DEQ shall be notified and these permit conditions may be revised to address those changes.

The Department of Environmental Quality certifies pursuant to the provisions of Section 401, that if JR Simplot Company, and subsequent contractors, comply with the terms and conditions in this certification and with ACOE permit NWW No. 043300059, this activity will comply with applicable requirements of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and will not violate Idaho's Water Quality Standards.

This section 401 certification and associated conditions may be appealed by submitting to DEQ a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the Rules of Administrative Procedure Before the Board of Environmental Quality IDAPA 58.01.23, within 35 days of the date of this letter.

You may contact me with any questions concerning this certification at (208) 236-6160.

Sincerely,

Lynn Van Every  
Water Quality Manager

cc: Tom Bassista, Stream Protection Specialist, Idaho Dept. of Water Resources  
James Joyner, Regulatory Project Manager, U.S. Army Corps of Engineers  
Christine Waite, Water Quality Scientist, DEQ (email)